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Application No.: 09/922,376 Art Unit: 3644

Examiner: Smith, Kimberly S. Filing Date: 06/03/2001

Examiner's Answer Date: 03/24/2004

Appellant: Jeffrey Lynn Chamberlain

Title: Dog Watering Toy

APPELLANT'S REPLY BRIEF

Appellant respectfully disagrees with the position taken by the Examiners in the Examiners Answer for the following reasons:

ISSUE 1

In their discussion of claim 2 the Examiners state that Deshaies clearly discloses that "the hollow portion can be shaped to look like a dog bone." Appellant points out that it is very well known to the art that dog bones do not have an exterior surface covered with bristles. Deshaies may have a hollow portion shaped like a bone but the exterior surface of Deshaies looks nothing like a bone (see Figures 1, 5, 6, 8, and 9).

With all due respect, the Examiners have misrepresented what Paper 14 said about claims 7 and 8. At page 4, line 11 reference numeral 46 is stated to be "valves" and "valves" are further described in that line and the subsequent line as being "bores penetrating the wall" (not a valve mechanism that moves in a substantially perpendicular alternate movement). Neither Paper 14 nor the Examiner's Answer explain how bores penetrating the wall can be a valve mechanism that moves in a substantially perpendicular alternate movement.

The rejection of claim 11 is improper because dog bones are not covered with bristles and because bores in the wall are not capable of substantially perpendicular alternate movement. Therefore Deshaies does not claim all the same elements as claim 11, cooperating in the same way.

#### ISSUE 2:

With all due respect, reference to Figures 1, 5, 6, 8, and 9 shows that the Deshaies invention is almost entirely covered by bristles. Indicia would not be visible.

The intended use of the invention of claims 3 and 12 was not discussed in Appellant's brief for the purpose of differentiating those claims from Deshaies. It was discussed for the purpose of showing that Deshaies cannot be used in combinations to render claims 3 and 12 obvious.

The Examiners state "As anyone who has walked down the pet toy aisle in any retail store will undoubtedly notice, pet toys are notoriously well known in the art to include indicia to make the device more attractive to the animal and to the buying public." Note the use of the present tense. The proper test of obviousness under 35 U.S.C. section 103 is whether the invention would have been obvious at the time it was made, not now. With all due respect the Examiners are not using the proper test.

#### ISSUE 3:

The figure shown by the Examiners in their discussion of the alleged obviousness of claims 4 and 10 is not found in either Deshaies or Hass. It is apparently a new reference. Appellant urges the Board not to consider it since it was not included in

section 10 of the Examiner's Answer and no showing is made there of how it is grounds for rejection as required by The Notice of May 3, 1988 (1092 O.G. 2635). It is also not shown in Paper 14 on which the Examiners rely. There is no proof or showing of how this figure depicts the rope bone of Deshaies. Deshaies teaches away from Hass.

Appellant respectfully disagrees with the contentions of the Examiners with respect to the inoperative nature of the combination of Hass with Deshaies. The Examiners state that the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art, and then go on to state that Hass teaches the use of the cord as a means for holding the device without contacting the wetted device. Appellant has contended that, in the combined references, the cord itself would be wetted. Note that the Examiners have not rebutted that contention and have not even tried. The wetted cord could not be used as a means to hold the device without contacting the wetted device. The wetted cord is part of the wetted device. That is why the combination is inoperative! Appellant urges the conclusion that Hass and Deshaies teach away from each other.

#### ISSUE 4:

Appellant respectfully disagrees with the Examiners' position respecting claims 5 and 13 because reference numeral 20 of Deshaies is not a hollow interior as stated, but is instead a "Pressurized Gas" (See Column 4, Line 27). The balloon at reference numeral 18 must not let gas escape as a reed

necessarily would, otherwise the gas would no longer be pressurized. The toothpaste reduces the size of the balloon 18 containing the pressurized gas 20 (See Column 4, Line 42 and 43) and the presence of a bell would obstruct this reduction in size rendering the Deshaies invention inoperative.

WHEREFORE For all the foregoing reasons Appellant respectfully requests that the rejections of all the claims that are the subject matter of this appeal be overruled.

Respectfully submitted,



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5/24/04

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